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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DANIEL MARTINEZ,

Plaintiff,

v.

JAMES DZURENDA, et al.,

Defendants.

Case No. 3:17-cv-00530-RCJ-CBC

**DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME TO FILE A
DISPOSITIVE MOTION
(First Request)**

Defendants Jennifer Nash et al., by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Dennis W. Hough, Deputy Attorney General, hereby move this Court for an order enlarging the time for Defendants' to file dispositive motions. This Motion is made pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. Proc.") 6(b) and is based upon the following Points and Authorities and all pleadings and papers on file herein. This Motion is made in good faith and not for the purposes of undue delay.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS AND PROCEDURAL HISTORY

Daniel Martinez ("Plaintiff") is a Nevada Department of Corrections ("NDOC") inmate proceeding *pro se* in this § 1983 action. Plaintiff has been released from prison. After screening, the Court construed Plaintiffs' allegations as an Eighth Amendment claim regarding condition of confinement. On February 26, 2019, parties participated in an Early Mediation Conference, but a settlement did not result. (ECF No. 14).

After the parties were unable to settle this case at the Inmate Early Mediation Conference, (ECF No. 15), and Defendants answered, (ECF No. 18), this Court issued its Scheduling Order. (ECF No. 19) In the Scheduling Order, the Court ordered the parties to submit any motions for summary judgment by September 5, 2019.

Unfortunately, Defendants are unable to comply with this deadline. Defendants need additional time to respond because the Litigation Division of the Office of the Attorney General is currently severely short-staffed. The burden this has placed on the attorneys remaining in the division, including Defendants' counsel, is currently overwhelming.¹ Accordingly, Defendants respectfully request that this Honorable Court allow them sixty (60) additional days, or up to and including Thursday November 4, 2019, to file their dispositive motion.

II. LEGAL STANDARD

District courts have inherent power to control their dockets. *Hamilton Copper & Steel Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir. 1990); *Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992). Fed. R. Civ. P. 6(b)(1) governs enlargements of time and provides as follows:

When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

"The proper procedure, when additional time for any purpose is needed, is to present to the Court a timely request for an extension before the time fixed has expired (*i.e.*, a request presented before the time then fixed for the purpose in question has expired)." *Canup v. Miss. Valley Barge Line Co.*, 31 F.R.D. 282, 283 (D. Pa. 1962). The *Canup* Court explained that "the practicalities of life" (such as an attorney's "conflicting professional engagements" or personal commitments such as vacations, family activities, illnesses, or death) often necessitate an enlargement of time to comply with a court deadline. *Id.* Extensions of time "usually are granted upon a showing of good cause, if timely made." *Creedon v. Taubman*, 8 F.R.D. 268, 269 (D. Ohio 1947). The good cause standard considers a party's diligence in seeking the continuance or extension. *See, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

¹ The leadership within this division is addressing this issue and, hopefully, the short-staffing will be resolved in thirty (30) to sixty (60) days.

1 **III. DISCUSSION**

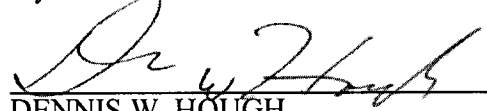
2 Defendants' deadline to file their dispositive motion is Thursday September 5, 2019. As the
3 deadline has not yet expired, they must therefore demonstrate good cause for the requested enlargement.
4 Good cause exists to enlarge the time for them to file their motion, because their counsel is currently
5 unable to complete the motion due to the manner in which severe short-staffing in this division of the
6 Office of the Attorney General has impacted counsel's current workload. Defendants are seeking this
7 enlargement in good faith and not for the purpose of any unnecessary delay. Moreover, Defendants do
8 not perceive any possible prejudice to Plaintiff if this motion is granted. Therefore, Defendants request
9 to be allowed up to and including Thursday November 4, 2019, to file their motion.

10 **IV. CONCLUSION**


11 As stated, Defendants need additional time to file their dispositive motion based on their
12 counsel's inability to timely complete the motion due to severe short-staffing in this division of the
13 Office of the Attorney General. Accordingly, Defendants respectfully request this Honorable Court
14 grant their motion and allow them up to and including Thursday November 4, 2019, to file their motion.

15 DATED this 5th day of August, 2019.

16 AARON D. FORD
17 Attorney General

18 By: 
19 DENNIS W. HOUGH
20 Deputy Attorney General

Attorneys for Defendant

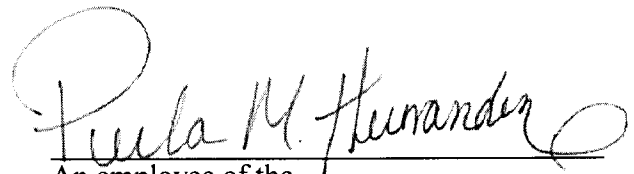
21
22 **IT IS SO ORDERED**
23 
24 U.S. MAGISTRATE JUDGE

25 DATED: 9/10/2019
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 5th day of August, 2019, I caused to be deposited for mailing, a true and correct copy of the foregoing, **DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME TO FILE A DISPOSITIVE MOTION (First Request)**, on the following:

Daniel Martinez
5112 Silverheart Ave
Las Vegas, NV 89142


An employee of the
Office of the Attorney General